

On July 19, 1999 claimant was released with restrictions. Respondent could not or would not accommodate those restrictions and claimant was unable to find other work. Two days before the Regular Hearing, respondent called claimant and offered him an accommodated job starting "today" - the date of the Regular Hearing. At the outset of the Regular Hearing claimant requested temporary total disability compensation or else "100 percent temporary partial" compensation from the date claimant was released to return to work with restrictions "up until today's date." At the conclusion of the December 20, 1999

Regular Hearing the Administrative Law Judge set terminal dates and issued the following order from which respondent appeals:

"Temporary partial disability following the last day of temporary total disability and continuing until Claimant is returned to full wages."

In its Application for Review by Appeals Board, respondent describes the issue as "Whether the Court abused its discretion in ordering temporary benefits after claimant's condition was determined to be permanent in nature." Neither party filed a brief.

Before the Board can decide the issue raised by respondent, it must first be determined whether the Board has jurisdiction to consider this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, the Appeals Board finds this to be an appeal from an interlocutory order which the Board is without jurisdiction to consider at this stage of the proceedings.

Although entered before the final award, this is not an appeal from an order entered pursuant to the preliminary hearing statute. The appealed order resulted from a regular hearing. For the Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 1999 Supp. 44-551(b)(1). The amendments to K.S.A. 44-551(b)(1), effective July 1, 1997, changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to review of "[a]ll **final** orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge." (Emphasis added.)

The Board finds the Administrative Law Judge's Order is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 1999 Supp. 44-551(a)(1). The Appeals Board concludes the Order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. Therefore, the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's appeal from the Order entered by Administrative Law Judge Jon L. Frobish dated December 20, 1999, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David M. Bryan, Wichita, KS
Ronald J. Laskowski, Topeka, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director